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The ABLE Act: Enabling The Disabled

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The Achieving a Better Life Experience ("ABLE") Act of 2014 is a Federal law that created new estate planning opportunities for those with disabilities. Under the ABLE Act, a person who is disabled under the Social Security rules may place up to $16,000 annually in an ABLE bank account without adversely affecting the person's eligibility for needs-based government benefits such as Supplemental Security Income (SSI) and Medicaid.

Although the main benefit of the ABLE account is that deposits into the ABLE account do not adversely impact a person's eligibility for SSI and Medicaid benefits, there are other benefits as well. First, the ABLE account is similar to a 529 College Savings Plan in that the deposit of up to $16,000 annually grows tax free from Federal income taxes. Second, if the ABLE account is opened with a Pennsylvania bank, it is also grows free from PA state income taxes and is not subject to Pennsylvania inheritance tax. Third, the account balance is protected from creditors of the disabled person.

An ABLE account may be opened and managed by the disabled person, his or her parents, guardian or Agent under a Power of Attorney. Funds belonging to the disabled person, or any other individual or entity, may be deposited into the disabled person's ABLE account. The disabled person is the owner and beneficiary of all of the funds in the ABLE account. Distributions from the account may be made for the beneficiary's Qualified Disability Expenses ("QDE"). Qualified Disability Expenses include basic living expenses such as education, housing, transportation, health and miscellaneous expenses such as funeral and burial expenses. A special benefit of the ABLE account is that housing expenses may be paid from the ABLE account with no resultant reduction in SSI benefits.

There are other ABLE rules in addition to the $16,000 annual contribution limit. First, an ABLE account can only be established for a person whose disability began before attaining 26 years of age. Second, an ABLE account balance is not considered by Social Security or Medicaid in the determination of a person's eligibility for benefits only if the account balance remains under $100,000. Amounts in excess of $100,000 are counted as resources of the beneficiary for these government programs. Third, a beneficiary can have only one ABLE account. Finally, in Pennsylvania, upon the death of the beneficiary, the ABLE account is payable to the estate of the beneficiary thus rendering the account balance subject to Medicaid Estate Recovery. Under Medicaid Estate Recovery rules, the balance of the account may be claimed by Estate Recovery to reimburse Medicaid for benefits paid during the beneficiary's lifetime.

Because moneys remaining in the ABLE account at the death of the beneficiary become subject to repayment for Medicaid benefits received by the beneficiary, third parties, such as parents or other family members of the beneficiary, should exercise caution before contributing to an ABLE account if the monies will not be exhausted during the beneficiary's lifetime. A Third Party Supplemental Needs Trust may be a better option to hold third party assets because, under Pennsylvania law, there is no Medicaid Estate Recovery claim for assets held in a Third Party Supplemental Needs Trust and therefore any remaining assets may be directed to other family members under the terms of a Third Party Supplemental Needs Trust.

Nevertheless, the ABLE account remains a highly useful vehicle to reduce a disabled person's own assets to below the eligibility threshold in order to qualify for or maintain SSI or Medicaid benefits. Additionally, a beneficiary who is able to manage his or her own finances may manage the ABLE account without the assistance of anyone else, which fosters independence for the beneficiary.

An ABLE account is often established as part of a comprehensive estate plan including a Third Party Supplemental Needs Trust. Your Certified Elder Law Attorney can explain to you how an ABLE account can enhance your estate plan to protect your assets and your eligibility for needs-based government benefits.